

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-217344**DATE:** June 7, 1985**MATTER OF:** Steel Erectors, Inc. - Davis-Bacon Act
Debarment**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had falsified certified payroll records, and failed to pay its employees overtime compensation. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees was intentional. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter to the Comptroller General, dated July 12, 1984, has recommended that the names of Gary Gregory, individually and as owner of Steel Erectors, Inc., and of Steel Erectors, Inc., be placed on the debarred bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982) and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982). For the following reasons, we concur with DOL's recommendation, order its implementation, and further order that the funds on deposit with our Office in this matter be distributed to the workers involved.

Steel Erectors performed work under contract number DE-AC04-82AL18822, with the Department of Energy for construction of a building at the Rocky Flats Plant, Golden, Colorado. The contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(2) (1984), the contractor was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified and incomplete, and that employees were not paid overtime compensation under the Contract Work Hours and Safety Standards Act. The DOL notified Steel

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Erectors of the violations of which it was charged by certified letter, together with an admonition that debarment was possible. Further, Steel Erectors was given an opportunity for a hearing before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that while the record indicates that the letter was received, no hearing was requested. After reexamining the record, DOL found that Steel Erectors violated the Davis-Bacon Act without any factor militating against debarment. Therefore, DOL recommended that the names Steel Erectors, Inc., and Gary Gregory, individually and as owner of Steel Erectors, Inc. be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act. We concur in this recommendation.

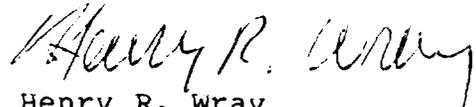
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. Further, as stated above, the DOL recommended debarment. In B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Steel Erectors, Inc., and Gary Gregory, individually and as owner of Steel Erectors, Inc., disregarded their obligations to their employees under the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by Steel Erectors' bad faith in the falsification of certified payroll records. In addition, the record indicates that Steel Erectors failed to pay its employees overtime compensation.

Therefore, the names Steel Erectors, Inc., and Gary Gregory, individually and as owner of Steel Erectors, Inc.,

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will be included on a list to be distributed to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.



Henry R. Wray
Associate General Counsel